IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

(1) D.B.CRIMINAL MURDER REFERENCE NO.2/2006
(State of Rajasthan vs. Bablu @ Mubarik Hussain)

(2) D.B.CRIMINAL JAIL APPEAL NO.447/2006
(Bablu @ Mubarik Hussain Vs. State of Rajasthan)

Date of Judgment: July 27, 2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE R.P.VYAS

Mr.J.P.S.Choudhary)
Mr.O.P.Rathi) Public Prosecutor

Mr.G.R.Punia, Amicus Curiae

BY THE COURT: **(PER HON'BLE MR.MATHUR J.)**

Reportable

1. The appellant Bablu @ Mubarik Hussain was charged for offence under Section 302 I.P.C. for murdering his wife Anisha aged 28 years, elder daughter Gulfsha aged 9 years, younger daughter Nisha aged 6 years, another daughter Anta @ Munni aged 4 years and youngest son Babu aged 2½ years. The Additional Sessions Judge (Fast Track), Nagaur by judgment dated 9.4.2006 having found the charge for

offence under Section 302 I.P.C. proved has made the instant reference for the confirmation of death sentence.

2. The prosecution case is that on 10.12.2005 at about 6 A.M. P.W.11 Alladeen submitted a written report at Police Station, Nagaur stating inter alia that in the evening of 9.12.2005 the appellant Bablu gave beating to his wife and children. But they were rescued on his intervention. He described Bablu as a person of notorious character. It was further averred that in the morning at about 5 his brother appellant Bablu came out of the house shouting and making declaration that he has killed all the five bastards by strangulation one by one "मैंने रात को पांचो हरामजादो को मार दिया एक एक कर गला दबा दबा कर मार दिया हैं" He killed his wife Anisha, elder daughter Gulfsha, younger daughter Nisha another younger daughter Anta @ Munni and the youngest son Babu. The dead bodies were found placed on the mattresses tying the thumbs of each leg of the dead bodies by thread. On this information police registered a case for offence under Section 302 I.P.C. and proceeded with investigation. All the dead bodies were sent for postmortem. A Medical Board consisting of

three doctors conducted the postmortem of all the five dead bodies. The appellant was arrested. After usual investigation police laid charge-sheet against the appellant for offence under Section 302 I.P.C. On being committed the appellant was tried of the charge of offence under Section 302 I.P.C. by the court of Additional Sessions Judge (Fast Track), Nagaur. The trial court on consideration of the evidence led by the prosecution found the appellant guilty of offence under Section 302 I.P.C. Considering the brutal nature of killings death sentence has been imposed and the instant reference has been made. The trial court relied upon following piece of circumstances:-

(1) Extra judicial confession made by the appellant before P.W.1 Murad Khan, P.W.2 Bablu @ Kalva, P.W.3 Mohd. Sharif and P.W.11 Alladeen.

(2) The presence of the appellant in the house wherein the alleged incident took place.

(3) Recovery of ear ring of the wife from the possession of the appellant.

3. We have heard the learned Amicus Curiae

Mr.G.R.Punia and the learned Public Prosecutor. We have also scrutinized and analysed the evidence on record. It is not in dispute that all the deceased persons died of homicidal death. The autopsy on the dead bodies of Anisha, Gulfsha, Nisha, Anta @ Munni and Babu was conducted by a medical board consisting of three doctors. Out of three doctors two namely P.W.9 Dr.Mahesh Panwar and P.W.10 Dr.(Mrs.) Jaya Mathur have appeared in the witness box and proved the postmortem reports. The details of postmortem report of each dead body is as follows.

The medical board noticed the following injuries on the dead body of **Anisha** vide Ex.P21,

> (1) PM staining present on back. Rigor mortis present in upper & lower limbs.
>
> (2) Abrasion 1 x 0.5 cm on left side in front of neck.
>
> (3) Bruise on right side of neck, 1.5 x 1 cm in size.

In the opinion of the medical board the cause of death of **Anisha** was asphyxia due to throttling.

The medical board noticed the following injuries on the dead body of **Gulfsha** vide Ex.P22,

> (1) Rigor mortis present on upper and lower limbs. Post Mortem staining present on

dependent parts.

(2) Abrasion 1 x0.5 cm on left side of front of neck.

(3) Bruise on right side of neck, 1.5 x 1 cm in size.

In the opinion of the medical board the cause of death of **Gulfsha** was asphyxia due to throttling.

The medical board noticed the following injuries on the dead body of **Nisha** vide Ex.P23,

(1) Rigor mortis appearing on upper and lower limbs. Post mortem staining present.

(2) 0.5 x 0.5 cm Abrasion on left side of front of neck.

(3) Bruise 1 x 1 cm on right side of front of neck.

In the opinion of the medical board the cause of death of **Nisha** was asphyxia due to throttling.

The medical board noticed the following injuries on the dead body of **Anta @ Munni** vide Ex.P24,

(1) PM staining present on back part of body. RM present in both limbs.

(2) An abrasion 1.5 x 1 cm on left side of front of neck 1.5 cm from midline. Blood stained froath present in both nostrils.

In the opinion of the medical board the cause of death of **Anta @ Munni** was asphyxia due to throttling.

The medical board noticed the following injuries on

the dead body of **Babu** vide Ex.P25,

> (1) PM staining present on back part. Rigor mortis appearing in both limbs.
>
> (2) Abrasion present on left side of front of neck upper part 1.5 x 1 cm in size and 3 cm from midline.
>
> (3) Cresent shaped Abrasions .8 x .1 cm size on right side 5 cm from midline.

In the opinion of the medical board the cause of death of **Babu** was asphyxia due to throttling.

4. It is well established that in cases where evidence is of circumstantial nature, the circumstances from which the conclusion of the guilt is to be drawn should be in the first place be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstantial evidence should be of a conclusive nature. They should exclude every possible hypothesis except the one proposed to be proved. In other words there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. Reference be made to

S.B.Sarda vs. State of Maharashtra reported in AIR 1984 SC 1622.

5. Taking the first circumstance, the prosecution produced P.W.1 Murad Khan, P.W.2 Bablu, P.W.3 Mohd. Sharif and P.W.11 Alladeen. Before we refer to the evidence of extra judicial confession, it would be convenient to refer the evidence of P.W.13 Rasitan the mother of the appellant. She deposed that out of the wedlock from the earlier husband namely Kallan she gave birth to appellant Bablu and three others namely Jumma, Alladeen and one more whose name she did not remember. After the death of Kallan she married to one Mehmood. The appellant lived in a house separately at a distance of 100 ft. from her residence. He was having three daughters and one son. All the children lived with his wife. This witness did not support the prosecution case as such she was declared hostile.

6. P.W.14 Jamil Ahmed is the father-in-law of the appellant. He stated that the appellant was married to his daughter deceased Anisha about 10-11 years back. Out of the said wedlock three daughters and one son was born. He also stated that his daughter used to

report that her husband i.e. the appellant used to beat her and the children. She also used to report that the appellant was a drunkard and a gambler. He used to demand money to fulfill the said wills. He was informed by the police that his daughter and her children were murdered by the appellant. In his opinion the appellant Bablu was a notorious person having the bad habits of consuming liquor and gambling. P.W.15 Jaitun is the mother-in-law of the appellant. She had also given the statement almost in the line of P.W.14 Jamil Ahmed.

7. P.W.1 Murad Khan stated that on 10.12.2005 he heard the shouting from the house of appellant Bablu. He was shouting making a declaration that he had killed his wife Anisha, daughter Gulfsa, Babu and two other daughters. He uttered that he has done his job finishing all. He also shouted that he has killed his wife Anisha, daughter Gulfsha, Babu and two daughters. He was also shouting that he had killed them by strangulation. He ran away from the place of incident. In exact words,

> " मैंने मेरा काम कर दिया सबकों ठिकाने लगा दिया। जो चिल्लाता हुआ कह रहा था कि मेरी पत्नी अनीसा , लड़की गुलफसा , बाबू , दो लड़कियां और थी को ठिकाने लगा दिया। दो लड़कियों का नाम पता नहीं। वो चिल्ला रहा

था कि मैंने गला घोंट कर मार दिया हैं। फिर वह बकता हुआ वहां से भाग गया।"

He also stated that he rushed to his house, his elder brother Alladeen also arrived. Then all of three opened the gate of the house and entered therein. They found that five dead bodies were lying covered by quilt. The legs of the dead bodies were tied by a rope. He also stated that the appellant is not a person of good character. He used to create scene after consuming liquor. He further stated that information of the incident was given to the police by the brother namely Alladeen. There is lengthy cross examination but nothing substantial has been elicited to discredit the testimony of this witness.

8. P.W.2 Bablu is the brother of the appellant. He deposed that they were five brothers. He alongwith Alladeen and Bablu lived in Nagaur. All the brothers used to live separately. He identified the appellant Bablu as his real brother. He further deposed that in the morning at about 5 he heard the shouting of his brother, claiming that he had killed his wife and children. The shouting attracted him, his mother,

Alladeen, Murad Khan and Sharif. He was shouting to the effect that he has killed his wife Anisha, daughter Gulfsha, Anta, Nisha and boy Babu by strangulation. In his words,

> " मैंने मेरी औरत अनीसा , लड़कियां गुलफसां , अनता , निशा व लड़का बाबू को गला दबा कर मार दिया। यह बात मुलजिम अपनी चौंतरी पर खड़ा होकर चिल्ला रहा था। और कोई नजदीक आया या बीच में आया तो उसे भी मार दूंगा। "

He alongwith his brother Alladeen, Sharif and Murad tried to catch hold Bablu but he ran away.

9. P.W.3 Mohd. Sharif is neighbour of the appellant. He stated that in the morning he heard from the inhabitants of the locality that Bablu has killed his wife and children. Murad Khan and other people of the locality tried to catch hold the appellant but he ran away.

10. P.W.11 Alladeen is the another brother of the appellant. He identified appellant as one of his brothers. He deposed that appellant used to live in a separate house. He used to beat his wife. He had advised him on various occasions not to do so. He

did not support the prosecution case as such he was declared hostile. P.W.12 Sarfudeen has also not supported the prosecution case and as such was also declared hostile.

11. It is submitted by the learned Amicus Curiae that the evidence of extra judicial confession produced by the prosecution is not creditable. It is further submitted that it is improbable that the appellant after committing the crime would have blurted out confession publicly standing on a platform. Relying on a decision of the Apex Court in State of Punjab vs. Bhajan Singh reported in AIR 1975 SC 258 it is submitted that persons who commit such murder after taking precautions of secrecy are not normally likely to become garrulous after the commission of the offence and acquire a sudden proneness to blurt out what they were at pains to conceal. On the other hand the learned Public Prosecutor has referred to two recent decisions of the Apex Court in Gura Singh vs. State of Rajasthan reported in AIR 2001SC 330 and State of Rajasthan vs. Raju reported in 2003(8) SCC 180.

12. The consensus of various decisions of the Apex

Court is that the evidence of extra judicial confession is required to be appreciated keeping in view various surrounding circumstances among which the most important is the person to whom the confession is made, the time and place of making it. Such confession can be relied upon and conviction can be founded thereon, if the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witnesses are clear, unambiguous and unmistakably convey that the accused the perpetrator of the crime and nothing is omitted by the witness which may militate against it.

13. In the instant case P.W.1 Murad Khan and P.W.2 Bablu have stated in terms that the appellant was shouting that he had killed his wife and children. We have already extracted the exact words while referring to the evidence of the said witnesses. P.W.1 Murad Khan is a neighbour and P.W.2 Bablu is the real brother of the appellant. There can be no motive to attribute

the said witnesses to make a untruthful statement. It is not the case that they were having any sort of inimical relations with the accused. P.W.3 Mohd. Sharif has stated that it has become known fact in the entire locality that the appellant has killed his wife and children. The extra judicial confession in the form of declaration has been made immediately after committing the crime. The witnesses have entered in the house and found the five dead bodies. In our view the circumstance is of conclusive nature and the prosecution has firmly established the same.

14. Turning to the second circumstance, it is stated by P.W.11 Alladeen that appellant had quarreled with his deceased wife. He advised him to behave properly with his family members. In the morning he came to know that he had killed his entire family. Thus, the accused was last seen in the company of the deceased persons in his house. In the identical circumstances when the family members were killed by the husband dealing with the evidence of last seen the Apex Court in State of Rajasthan vs. Kheraj Ram reported in 2003(8) SCC 224 observed, thus,

"The Killings were possible by one who was

> known to the victims and who could have gained access without creating any stir or attracting anybody's attention, keeping in view the time and place of incident."

Thus, the prosecution has succeeded in establishing the second circumstance, which is also of conclusive nature.

15. The third circumstance is of the recovery of ear-ring of the wife from the possession of the appellant. It is stated by P.W.17 Shambhunath the Investigating Officer that the appellant was arrested vide Ex.P16, at that time he was carrying with him ear-ring which was seized by Ex.P17. It is submitted that there is nothing unusual of ear-ring of the wife with the appellant. Secondly there is no evidence that the ear-ring belonged to his wife in absence of identification proceedings. We are in agreement with the learned Amicus Curiae that this piece of circumstance is not of much significance.

16. Thus, the circumstances highlighted by the prosecution present the complete picture which completely ruled out the role of any other person and unerringly as well as inevitably points the finger at the

appellant and in that view of the matter the trial court was justified in convicting the appellant. It is significant to notice that the postmortem reports reveal that all the five members of the family were killed brutally. The nature of injuries inflicted in the manner and position in which the bodies were found that go to show that person who was already inside the house with the perfect plan and design could have so smartly and swiftly killed all of them without causing any flutter to disturb any one of them, so as to either awaken them or even let them attempt escape. The murders were not for any monetary gain as nothing was found or stated to have been stolen. Thus, the gruesome act should have been committed by somebody for his own personal reasons to finish the whole family. The killing was possible only by one, who was known to the victims and who could have access without creating any stir or attracting anybody's attention, keeping in view the time and place of the incident. The instant case is very close to the decision of the Apex Court in State of Rajasthan vs. Kheraj Ram(supra). Thus, we hold that the prosecution has succeeded in establishing the charge against the appellant of committing murders of his wife Anisha and children Gulfsha, Nisha, Anta @ Munni and

Babu.

17. Turning to the question of confirmation of death sentence the law of land is that death sentence is ordinarily rules out and can only be imposed for **special reasons** as provided in Section 354(3) of the Code of Criminal Procedure. Recently the Apex Court in State of Rajasthan vs. Kheraj Ram (supra) taking into consideration the guidelines provided in Machhi Singh vs. State of Punjab reported in 1983(3) SCC 470 and in Bachan Singh vs. State of Punjab reported in 1980(2) SCC 684 further provided the guidelines as follows:-

> "In rarest of rare cases when collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances:
>
> (1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.
>
> (2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. Murder by hired assassin for money or reward or a cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a

> position of trust, or murder is committed in the course for betrayal of the motherland.
>
> (3) When murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of "bride burning" or "dowry deaths" or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.
>
> (4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.
>
> (5) When the victim of murder is an innocent child, or a helpless woman or an old or infirm person or a person vis-a-vis whom the murderer is in a dominating position or a public figure generally loved and respected by the community.
>
> If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for the rarest of rare cases, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."

18. In the instant case the evidence shows that the appellant acted in a most cruel and diabolic manner. He deliberately planned and meticulously executed the same. There was not even any remorse for such

gruesome acts. On the contrary he was satisfied with what he had done. He made a declaration of his act abusing his wife and children. Thus, we are of the view that the appellant Bablu @ Mubarik Hussain has acted in most cruel and inhumanly manner and the murders were committed in an extremely brutal, diabolical, revolting or dastardly manner. The victims were four innocent children and a helpless woman. Taking note of all these factors, we are of the view that it would be fitness of the interest of justice that death sentence as imposed by the trial court is most appropriate.

19. Consequently, the murder reference made by Additional Sessions Judge(Fast Track), Nagaur by judgment dated 9.4.2006 awarding the death sentence to the appellant is hereby confirmed. The appeal filed by the appellant being devoid of merit is dismissed. The death sentence shall be carried out in accordance with law. However, there shall be a stay on the execution of the death sentence for a period of two months in order to facilitate the appellant to have a remedy of special leave to appeal before the Supreme Court. The Jail authorities will ensure that the appellant is provided appropriate legal aid, if he so requires. A certified copy

of the judgment be made available to the appellant free of cost expeditiously.

(R.P. VYAS), J. **(N.N.MATHUR), J.**

BKS/-